

CLERK OF THE COURT

MOT

James J. Pisanelli, Esq., Bar No. 4027

[JJP@pisanellibice.com](mailto:JJP@pisanellibice.com)

Todd L. Bice, Esq., Bar No. 4534

[TLB@pisanellibice.com](mailto:TLB@pisanellibice.com)

Debra L. Spinelli, Esq., Bar No. 9695

[DLS@pisanellibice.com](mailto:DLS@pisanellibice.com)

PISANELLI BICE PLLC

3883 Howard Hughes Parkway, Suite 800

Las Vegas, Nevada 89169

Telephone: (702) 214-2100

Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada  
corporation; SANDS CHINA LTD., a  
Cayman Islands corporation; DOES 1  
through X; and ROE CORPORATIONS  
I through X,

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691

Dept. No.: XI

**PLAINTIFF STEVEN C. JACOBS'  
EXPEDITED MOTION TO POSTPONE  
THE JULY 13, 2012, SANCTIONS  
HEARING ON ORDER SHORTENING  
TIME**

Hearing Date:

July 10, 2012

Hearing Time:

9:00am

Plaintiff Steven C. Jacobs ("Jacobs"), moves this Court on an expedited basis to postpone the hearing presently scheduled for July 13, 2012, for purposes of determining the appropriate sanctions to be issued against Defendants. The basis for this request is simple: Yesterday, Jacobs took the deposition of Las Vegas Sands Corp.'s ("LVSC") Assistant General Counsel, Michael Kostinsky ("Kostinsky"). That deposition confirmed pervasive misrepresentations were made to this Court and to Jacobs over the last eighteen months about Defendants' preservation and possession of documents pertaining to this case. To be blunt, the representations made to this Court and to Jacobs by counsel for LVSC and Sands China, LLC ("Sands China") have been outright false and appalling.

PISANELLI BICE PLLC  
3883 HOWARD HUGHES PARKWAY, SUITE 800  
LAS VEGAS, NEVADA 89169

1 The deposition also confirmed that further discovery is warranted before this Court  
2 convenes any sanctions hearing so that this Court can assess the full magnitude of the  
3 misrepresentations that have occurred. Specifically, Jacobs requests taking depositions of Gayle  
4 Hyman ("Hyman") as well as Robert Rubenstein ("Rubenstein"). These are two individuals that  
5 Kostrinsky identified as having overseen the gathering of documents pertinent to this case, as well  
6 as government investigations that have been launched in the United States against LVSC.  
7 Because the hearing on this Motion in the ordinary course is not possible in light of the Court's  
8 scheduled hearing, Jacobs requests an order shortening time.

9 This Motion is supported by the accompanying Memorandum of Points and Authorities,  
10 the Declaration of James J. Pisanelli, Esq. and exhibits attached hereto.

11 DATED this 6th day of July, 2012.

12 PISANELLI BICE PLLC

13 By: 

14 James J. Pisanelli, Esq., Bar No. 4027

15 Todd L. Bice, Esq., Bar No. 4534

16 Debra L. Spinelli, Esq., Bar No. 9695

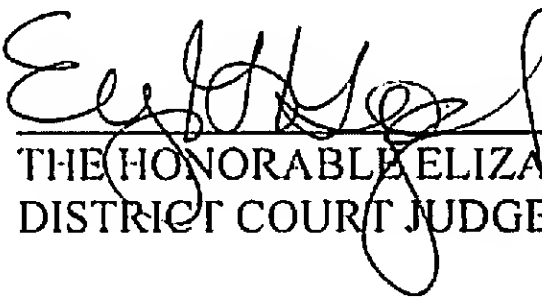
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169

17 Attorneys for Plaintiff Steven C. Jacobs  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORDER SHORTENING TIME

Good cause appearing, it is hereby ordered that the foregoing PLAINTIFF STEVEN C. JACOBS' EXPEDITED MOTION TO POSTPONE JULY 13, 2012, SANCTIONS HEARING shall be heard on shortened time on the 19<sup>th</sup> day of Aug, 2012, at the hour of 9 o'clock am in Department XI of the Eighth Judicial District Court.

DATED this 6<sup>th</sup> day of July, 2012.

  
THE HONORABLE ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE

Respectfully submitted:

PISANELLI BICE PLLC

By: 

James J. Pisanelli, Esq., Bar No. 4027  
Todd L. Bice, Esq., Bar No. 4534  
Debra L. Spinelli, Esq., Bar No. 9695  
3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169

Attorneys for Plaintiff Steven C. Jacobs



**MEMORANDUM OF POINTS AND AUTHORITIES**

In the interest of time, Jacobs will not burden this Court with reciting the numerous representations that have been made by counsel for LVSC and Sands China concerning their claims as to preservation and review of documents related to this case. It suffices to recall their repeated claims as to how the Macau Data Privacy Act precluded them from producing documentation in this case, as well as precluding counsel or LVSC from even reviewing those documents. Rest assured, those numerous representations will be recited in detail in full briefing at the time this Court conducts the hearing concerning sanctions.

But for now, the deposition of Kostrinsky has laid bare the absolute fraud that has been perpetrated on this Court. As Kostrinsky revealed, not only had all of Jacobs' emails from Macau been transported to LVSC in August of 2010, those emails have been extensively reviewed, including marital communications between Jacobs and his wife. Not only were those emails reviewed internally, they were also reviewed by the very same attorneys who stood before this Court representing how LVSC did not have this information and it had not been reviewed. What is more, Kostrinsky revealed that the law firm of O'Melveny and Myers had copied all of the data stored on his computer, which included the Jacobs ESI, long ago. Thus, not only has this data been in LVSC's possession for nearly two years – all the while it represented otherwise – it has also been disseminated to others. The most recent representation to this Court that the data was brought here "in error" was plainly untrue.

So that the Court can truly appreciate the magnitude of the deception that has occurred, the following are just some key points established at the deposition:

- Prior to March 2011, Kostrinsky (an LVSC lawyer) was never denied information he requested from Macau, and he performed various services related to Macau. (*Id.*, 58:19-59:18.)
- In early August 2010, Kostrinsky sought information from Sands China subsidiaries related to Steven Jacobs. (*Id.*, 61:17-24.) Louis Melo and Gayle Hyman knew of this request, as did LVSC and Sands China IT people. (*Id.*, 62:1-64:20.) In fact, Kostrinsky was told to obtain this information by Gayle Hyman, his supervisor, but he does not know who made the ultimate decision. (*Id.*, 69:14-70:1.) LVSC's counsel instructed Kostrinsky not to disclose who else knew of his request. (*Id.*, 63:11-20.)

- 1 • Based upon his request, someone at Sands China shipped a copy of Jacobs' emails  
2 as well as an image of Jacobs' desktop computer to Las Vegas. (*Id.*, 70:11-73:11.)  
3 That data has been in LVSC's possession since July/August 2010. Indeed, for  
4 Jacobs' emails, Kostrinsky actually had a file on his laptop called "Jacobs'  
5 emails." (*Id.*, 78:6-79:5; 81:10-22.) Kostrinsky spent many hours reviewing the  
6 emails and other data as early as August 2010 – prior to the lawsuit. (*Id.*) He  
7 printed some of the emails out. He shared the emails with certain people.  
8 (74:23-75:10.) There was no restriction on who could access and review Jacobs'  
9 emails. (*Id.*, 76:11-14.)
- 10 • Kostrinsky shared the emails with people who asked, and testified to Hyman,  
11 Rubenstein, and Melo specifically. (*Id.*, 62:1-63:24, 90:3-9, 94:15-17.) But,  
12 outside counsel reviewed the emails as well. In fact, Steve Peek, in the  
13 May/June/July 2011 time frame personally went to Kostrinsky's office, sat at  
14 Kostrinsky's desk for an entire afternoon, and reviewed Jacobs' emails from  
15 Kostrinsky's laptop. (*Id.*, 83:25-87:20, 90:3-9.) Mr. Peek even printed some of  
16 the emails. (95:4-96:4.) One of Peek's colleagues from Holland and Hart also  
17 spent a morning or afternoon in Kostrinsky's office looking at Jacobs' emails.  
18 (*Id.*, 84:22-85:16.)
- 19 • Lawyers from Glaser Weil also knew that LVSC possessed Jacobs' emails on  
20 Kostrinsky's laptop shortly after they were retained. (*Id.*, 88:24-89:14.) Although  
21 Kostrinsky said that it was "possible" that the law firm O'Melveny & Myers (who  
22 handled the SEC subpoena from March 2011 onward) knew, too. (*Id.*, 91:9-18).  
23 He later testified that that firm actually copied his (Kostrinsky's) entire laptop.  
24 (*Id.*, 123:25-124:21.) So, it is more than just "possible."
- 25 • With respect to the second group of Jacobs-related ESI that LVSC has possessed in  
26 Las Vegas since July/August 2010 – Jacobs' entire desktop – Kostrinsky testified  
27 that he asked for Jacobs' desktop hard drive in Macau to be copied, and a copy was  
28 then shipped to Las Vegas in early/mid August 2010. (*Id.*, 98:9-100:18.) Many  
people have known all along that as of August 2010 LVSC possessed copy of  
Jacobs' hard drive in Las Vegas, including Steve Peek, Glaser Weil attorneys, and  
O'Melveny & Myers, to name some. (*Id.*, 101:19-104:21.) Kostrinsky confirmed  
that anything he had in the Jacobs case was promptly shared with counsel, and thus  
they have all known about the true location of this information. (*Id.*, 134:18-19.)

20 As Kostrinsky also confirmed, he was not in charge of the data retention and was largely  
21 out of the loop after April, 2011.<sup>1</sup> He explained that LVSC had been subpoenaed for information  
22 from the United States Securities and Exchange Commission ("SEC") as well as the Department  
23 of Justice ("DOJ") and that the handling of this matter, and the documents pertaining thereto, were  
24 taken over by Robert Rubenstein. Prior to that time, the response was being directed by  
25 Kostrinsky's supervisor, General Counsel Gayle Hyman. Kostrinsky could not identify the full  
26 extent to which the documentation was accessible to and reviewed by others.

<sup>1</sup> Kostrinsky ceased working for LVSC in December, 2011.

1 The deposition also exposed facts showing that all of the noise made by LVSC and Sands  
2 China about restraints on access to data from Macau has been a ruse. The documents pertaining  
3 to Jacobs as well as the investigations by the SEC and DOJ were placed in at least two electronic  
4 repositories (*i.e.*, "shared drives"). To Kostrinsky's knowledge and understanding, those  
5 repositories can be accessed remotely by anyone regardless of their location who is given the  
6 electronic keys to the repository. These same persons can print off all of the documentation  
7 anywhere, including in the United States. Thus, the claims made by LVSC and Sands China to  
8 this Court about how the data cannot be accessed outside of Macau is, and always has been, a  
9 complete farce designed to obstruct the fair prosecution of this case.

10 Additionally, Kostrinsky testified to facts showing that even the most recent  
11 representations to this Court – about the status of Jacobs' ESI – were untrue. As this Court may  
12 recall, counsel recently informed this Court that it had just discovered that the original hard drive  
13 from Jacobs' computer has mysteriously gone missing. But, Kostrinsky revealed that LVSC and  
14 Sands China have known of this fact for nearly a year. He confirmed that Jacobs' original hard  
15 drive could not be located as of the summer of 2011. Once again, LVSC and Sands China have  
16 resorted to misrepresenting facts to this Court in their attempts to whitewash their prior  
17 misrepresentations about preservation and possession of documents.

18 In light of these startling revelations, Jacobs requests that this Court postpone the  
19 presently scheduled July 13, 2012, hearing, so that he may conduct additional discovery and  
20 present full briefing to this Court. It is imperative that this Court develop a full evidentiary record  
21 on this matter so that it may determine what sanctions are appropriate in light of the truth, not the  
22 spin that LVSC and Sands China hope to perpetrate.

23 DATED this 6th day of July, 2012.

24 PISANELLI BICE PLLC

25 By: 

James S. Pisanelli, Esq., Bar No. 4027

Todd L. Bice, Esq., Bar No. 4534

Debra L. Spinelli, Esq., Bar No. 9695

3883 Howard Hughes Parkway, Suite 800  
Las Vegas, Nevada 89169

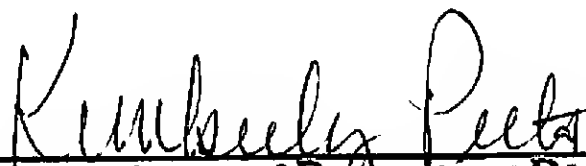
28 Attorneys for Plaintiff Steven C. Jacobs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 6th day of June, 2012, I caused to be sent via e-mail and United States Mail, postage prepaid, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' EXPEDITED MOTION TO POSTPONE JULY 13, 2012, SANCTIONS HEARING** properly addressed to the following:

J. Stephen Peek, Esq.  
HOLLAND & HART  
9555 Hillwood Drive, Second Floor  
Las Vegas, NV 89134  
[speek@hollandhart.com](mailto:speek@hollandhart.com)  
[bganderson@hollandhart.com](mailto:bganderson@hollandhart.com)

Brad D. Brian, Esq.  
Bradley Schneider, Esq.  
Henry Weissmann, Esq.  
John Owens, Esq.  
MUNGER, TOLLES & OLSEN LLP  
355 South Grand Avenue 35th Floor  
Los Angeles, CA 90071-1560  
[Brad.Brian@mto.com](mailto:Brad.Brian@mto.com)  
[Henry.Weissmann@mto.com](mailto:Henry.Weissmann@mto.com)  
[John.Owens@mto.com](mailto:John.Owens@mto.com)  
[Bradley.Schneider@mto.com](mailto:Bradley.Schneider@mto.com)

  
An employee of PISANELLI BICE PLLC